CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

JOCELYNNE FALLGATTER and JEFF KIRKMAN,	)	**Case No. 06-3-0003**
Petitioners,	)	***(Fallgatter V)***
v.	)	
	)	**FINAL DECISION AND ORDER**
CITY OF SULTAN,	)	
Respondent.	)	

SYNOPSIS

The City of Sultan adopted a Six-Year Transportation Improvement Program [Resolution 05-18, July 11, 2005], a General Sewer Plan [Ordinance 897-05, December 21, 2005], and a Water System Plan [Ordinance 898-05, December 21, 2005]. Each of these functional plans was enacted by Sultan in consideration of statutes other than the GMA and submitted to the appropriate State agency [Transportation, Health, and/or Ecology] for review. Ordinance 898-05 and 897-05 provided for amendment of the Comprehensive Plan, if necessary, upon approval by the reviewing agency. Petitioners challenged these enactments as not consistent with the capital facilities, utilities, and/or transportation elements of the City of Sultan 2004 Comprehensive Plan.

The Board found that the functional plans were inconsistent with the Sultan Comprehensive Plan and did not comply with RCW 36.70A.120. The Board entered an order of noncompliance and remanded the functional plans to the City, with an extended compliance period in recognition of Sultan's reorganization of its municipal planning function.

Petitioners also challenged the City's failure to update elements of its Comprehensive Plan – the capital facilities element and parks element – and failure to complete the update of its development regulations and critical areas ordinance. The Board ruled that Petitioners failed to carry their burden in demonstrating a statutory deadline for a failure-to-act challenge, except with respect to the update of development regulations and critical areas ordinance. The Board entered an order of noncompliance – failure to act and set a compliance schedule for the City's completion of its review and update of development regulations and critical areas ordinance.

I. BACKGROUND[1]

On January 20, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Petitioners Jocelynne Fallgatter and Jeff Kirkman (**Petitioners or Fallgatter**). The matter was assigned Case No. 06-3-0003, and is hereafter referred to as *Fallgatter V*. Board member Margaret A. Pageler is the Presiding Officer for this matter. Petitioners challenge the City of Sultan's (**Respondent** or **City**) adoption of Ordinances 897-05 and 898-05, adopting the General Sewer and Water System Plans, and Resolution 05-18, adopting the Transportation Improvement Program (**TIP**), as non-compliant with the GMA. Petitioners also challenge the failure of the City to act to update and amend various elements of its Comprehensive Plan and development regulations.

The Board convened the Prehearing Conference on February 21, 2006. Presiding Officer Margaret Pageler conducted the conference, with Board members Ed McGuire and Bruce Laing and Board extern Amie Hirsch also in attendance. Petitioners Jocelynne Fallgatter and Jeff Kirkman were present *pro se*. Thom Graafstra represented Respondent and was accompanied by Rick Cisar, City Administrator.

At the Prehearing Conference the parties indicated that they had begun discussion which may resolve some or all of Petitioners' issues. The Legal Issues presented were discussed in the context of the City's representation that it is proposing a series of tasks that would address some of these issues.

On February 23, 2006, the Board issued its Prehearing Order, establishing a final schedule for briefing and hearing this matter, and the legal issues to be addressed.

Motions to Dismiss and to Supplement the Record

During the time provided for motions, the City of Sultan filed a motion to dismiss the challenges to Ordinances 897-05 and 898-05, the General Sewer Plan and Water System Plan. Copies of the plans were submitted with the motion. Petitioners submitted two motions to supplement the record. All motions were briefed by both parties.

On April 24, 2006, the Board issued its Order on Motions **denying** the motion to dismiss, **denying** Petitioners' first motion to supplement the record, and largely **granting** Petitioners' second motion to supplement the record.

On May 9, 2006, the City filed "Respondent's Supplementation of Index to the Record."

Briefing and Argument on the Merits

All prehearing briefing was timely filed. On May 11, 2006, the Board received "Petitioners' Prehearing Brief" with 60 exhibits - **Fallgatter PHB.**

[1] The complete chronology of procedures in CPSGMHB Case No. 06-3-0003 is set forth in Appendix A.

On May 25, 2006, the Board received "Respondent City of Sultan's Response Brief" with 5 exhibits – **City Response.** The City Response contained several motions, including a motion to dismiss the case [City Response, at 2-5] or, in the alternative, to disqualify Board members [*id*. at 6] and to dismiss arguments concerning enforcement of the settlement agreement in a prior case – CPSGMHB Case No. 05-3-0008 [*id*. at 8].

On June 1, 2006, the Board received Petitioners' "Rebuttal to Respondent City of Sultan's Response Brief" with 5 exhibits – **Fallgatter Reply**.

On June 5, 2006, the Board issued its "Order Regarding Disqualification of Board," **denying** the City's motion to dismiss or disqualify and **granting** the motion to strike references and argument concerning enforcement of the settlement agreement.

The Board convened the Hearing on the Merits at 10:00 a.m., June 8, 2006, in the conference room adjacent to the Board's offices. Board member Margaret Pageler presided, with Board members Bruce Laing and Ed McGuire in attendance. Board law clerk Julie Taylor and Board externs Kris Hollingshead and Brian Payne were also present. Petitioners Jocelynne Fallgatter and Jeff Kirkman appeared *pro se*. Respondent City of Sultan was represented by its attorney Thom Graafstra, accompanied by City Director of the Department of Community Development Rick Cisar. Court reporting services were provided by Eva Jankovits of Byers & Anderson. Several observers also attended. The hearing was adjourned at approximately 11:30 a.m. The Board did not order a copy of the transcript.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, STANDARD OF REVIEW, AND DEFERENCE TO LOCAL JURISDICTIONS

Petitioners challenge the City's adoption of Ordinance Nos. 897-05 and 898-05, and the City's failure to act with respect to other GMA obligations. Comprehensive plans and development regulations, and amendments thereto, adopted by the City of Sultan pursuant to the Act, are presumed valid upon adoption. RCW 36.70A.320(1).

The burden is on the Petitioners to demonstrate that the actions taken by the City, or its failure to act, are not in compliance with the Act. RCW 36.70A.320(2).

The Board shall find the City of Sultan in compliance with the Act, unless it determines that the City's action was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Act. RCW 36.70A.320(3). As articulated most recently by the Supreme Court in *Ferry County v. Concerned Friends of Ferry County, et al.* ***(Ferry County),*** 155 Wn.2d 824, 833, 123 P.3d 102 (2005): "The Board adjudicates compliance with the GMA and must find compliance unless a county's or city's action is clearly erroneous. RCW 36.70A.280, 320(3)." For the Board to find the City's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.3201 the Board will "apply a more deferential standard of review" to the City of Sultan in how it plans for growth, so long as its action "is consistent with the goals and requirements of [the GMA]." The Supreme Court delineated this required deference in *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board* ***(Quadrant)***, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005), stating: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA … cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." The Court in *Quadrant* noted that no deference is due a county or city when its proposed action violates a specific statutory mandate. *Quadrant*, at 240, fn. 8. [2]

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

III. BOARD JURISDICTION, PRELIMINARY MATTERS AND PREFATORY NOTE

A. Board Jurisdiction

The Board finds that the Petitioners' PFR was timely filed in challenging Ordinances No. 898-05 and 897-05 and Resolution 05-18, pursuant to RCW 36.70A.290(2). Resolution 05-18, adopting a Six-Year Transportation Improvement Plan for 2006-2011, was adopted on July 11, 2005. The City has belatedly moved to dismiss as untimely Legal Issue 1(a), which is based on Resolution 05-18, adopting the Transportation Improvement Plan. City Response, at 9. However, there is no evidence that notice of adoption of Resolution 05-18 was ever published and therefore the 60-day window for GMA challenge never closed. *See*, Fallgatter Reply, at 6; RCW 36.70A.290(2); *McVittie IV v. Snohomish County*, CPSGMHB Case No. 00-3-0006c, Order on Dispositive Motion (Apr. 25, 2000), at 4-5. The motion to dismiss Legal Issue 1(a) as untimely is **denied.**

Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2). Pursuant to RCW 36.70A.280(1)(a), the Board has subject matter jurisdiction over the challenged ordinances with respect to their consistency with the City of Sultan's Comprehensive Plan. *See Fallgatter V*, Order on Motions (Apr. 24, 2006).

B. Preliminary Matters

Official Notice:

[2] This is consistent with prior Supreme Court holdings: "[L]ocal discretion is bounded, however, by the goals and requirements of the GMA," *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000); and "deference is only given to policy choices that are consistent with the goals and requirements of the GMA," *Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 14, 57 P.3d 1156 (2002).

At the Hearing on the Merits, the Presiding Officer indicated that, pursuant to WAC 242-02-660(4), the Board takes official notice of two Snohomish County enactments: Snohomish County Ordinance No. 05-082 (December 21, 2005), establishing the Sultan UGA, which has been placed in the case file as Supplemental Exhibit 1; and Snohomish Countywide Planning Policies updating population allocations, which has been placed in the case file as Supplemental Exhibit 2.

Request for Reconsideration:

On June 5, 2006, the Board issued an "Order Regarding Disqualification of Board" (**6/5/06 Order**). This Order was issued in response to a motion from the City of Sultan requesting that the Board disqualify itself from hearing this case and dismiss the petition for review in this matter. The basis of the motion arose from comments made by Petitioners regarding settlement and mediation procedures at the Joint Board meeting – Pro se Roundtable – held in Olympia on April 27, 2006. The Board **declined** to recuse itself from hearing the case and **denied** the motion to dismiss the petition. However, the Board did **strike** references to a settlement agreement used by Petitioners in their briefing. *See* 6/5/06 Order, at 1-11.

At the June 8, 2006 Hearing on the Merits (**HOM**) both Respondent City of Sultan and Petitioners Fallgatter/Kirkman orally asked the Board to reconsider its 6/5/06 Order. The City asked the Board to reconsider its decision regarding recusal and dismissal; Petitioner asked the Board to reconsider its decision regarding the striking of reference to the settlement agreement. The request was timely per WAC 242-02-832(1). The Board entertained brief argument on the issues and gave the parties until June 15, 2006 to file supplemental briefing on the question.

On June 15, 2006 the Board received: 1) "Supplemental Authorities Regarding Board Disqualification" filed by the City of Sultan; and 2) "Motion for Reconsideration of Board's Order Regarding Disqualification of Board" filed by Petitioners.

The Board has reviewed its 6/5/06 Order and the briefing submitted by the parties, has considered and deliberated on the arguments offered by the parties, and has concluded as follows:

- The City of Sultan's request for reconsideration of the Board's 6/5/06 Order pertaining to disqualification and/or dismissal of the petition is **denied**. The City offers no argument that was not offered in the original motion to disqualify in the prehearing briefs. The Board notes that the Board's Rules of Practice and Procedure specify that the Boards' "semiannual joint boards meeting will be held the last Thursday in April of each year" within the Western Washington Board's region and that the location, time and agenda is to be posted on the Board's website in March of each year. The time, location, and agenda for the April 27, 2006 semiannual joint board meeting was posted on the GMHB website.

- The request for reconsideration made by Petitioners Fallgatter and Kirkman pertaining to the striking of reference to the settlement agreement is **denied**. The Petitioners offer no argument not considered by the Board in reaching its decision. The Board notes that the "struck" settlement agreement was adopted by the City, is the subject of much colloquy in transcribed City Council meetings and memoranda, and that the Board could take official notice of the enactment under WAC 242-02-660(4). However, the Board finds that official notice of the enactment is not necessary for resolution of the issues in this case.

C. Prefatory Note

Legal Issue Nos. 1, 2, and 3 challenge Ordinances 898-05 and 897-05 [Water and Sewer Plans] and Resolution 05-18 [Transportation Improvement Plan]. These issues will be discussed together.

Petitioners have withdrawn Legal Issue No. 4 – Failure to adopt stormwater management plan.[3] Fallgatter PHB, at 26-27. The City of Sultan has now adopted a stormwater management plan and the challenge is moot. Legal Issue No. 4 is **dismissed**.

Legal Issue Nos. 5 and 6 challenge the City's failure to act to amend the Capital Facilities and Parks Elements of its Comprehensive Plan. These issues will be discussed together.

Regarding Legal Issue No. 7 – Failure to Update Development Regulations[4] - the City of Sultan acknowledges that it has not completed the review and update of its development regulations (including critical areas ordinances) mandated by RCW 36.70A.130. City Response, at 17. The Board will enter an **Order of Non-Compliance – Failure to Act** – and establish a compliance schedule for completion of this GMA requirement.

IV. LEGAL ISSUES AND DISCUSSION

A. The Challenged Actions and Context

The City of Sultan adopted a Six-Year Transportation Improvement Plan [Resolution 05-18, July 27, 2005], a Water System Plan [Ordinance 898-05, December 21, 2005], and a General Sewer Plan [Ordinance 897-05, December 21, 2005]. Each of these items was enacted by Sultan in consideration of statutes other than the GMA and submitted to the appropriate State agency [Transportation, Health, or Ecology] for review. Ordinances 898-05 and 897-05 provided for amendment of the Comprehensive Plan, if necessary, upon approval by the reviewing agency. Petitioners challenged these enactments as not consistent with the capital facilities, utilities, and transportation elements of the City of

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[3] As set forth in the PHO, Issue No. 4 states: *Did the City of Sultan interfere with the goals of the GMA specifically RCW 36.70A.020 (1), (10) & (12) by failing to act to adopt a stormwater plan in conformance with RCW 36.70A.070?* The substance of the City's recently-adopted stormwater management plan is challenged by Petitioners in CPSGMHB Case No. 06-3-0017 (*Fallgatter VI v. City of Sultan*).

[4] As set forth in the PHO, Issue No. 7 states: *Did the City of Sultan substantially interfere with the goals of the GMA, specifically RCW 36.70A.020(1),(3),(5),(7) & (12), by failing to review and revise development regulations as required by RCW 36.70A.040 & .130?*

Sultan 2004 Comprehensive Plan [**Comp Plan]**. Petitioners also challenged the City's failure to complete or update other elements of its plan and development regulations and failure to provide required public participation.

Petitioners are former Sultan Planning Commissioners who have undertaken a series of challenges in an effort to ensure that the City of Sultan, which faces significant growth pressures, complies with the GMA.[5] One of Petitioners' expressed goals is a rational coordination of the periodic updates and amendments of comprehensive plan elements and regulations so that financing strategies are in place and public participation in these decisions is optimized as the City grows. *Fallgatter V* PFR, at 2-5. It appears to the Board that the City of Sultan, with limited specialized staff and consultant resources, has struggled to catch up and keep up with the multiple demands and deadlines of urban planning. *See, e.g.*, Fallgatter PHB, Ex. 2, 24.

Petitioners here challenge Sultan's adoption of the 2005 Transportation Improvement Plan [**TIP]**, Draft 2005 Water System Plan [**Water Plan**] and Draft 2005 General Sewer Plan [**Sewer Plan**] for inconsistency with the Comp Plan. [Legal Issue 1] As compared to the Comp Plan, the TIP added some projects and increased the total cost. The Water and Sewer Plans used different population forecasts from the population allocations in the Comp Plan. Petitioners argue that the Comp Plan should have been amended concurrently and that the public participation process adopted for Comp Plan amendments should have been followed. [Legal Issues 2 and 3]

Additionally Petitioners challenge the City for failure to act to complete a number of unfinished planning tasks: updating its capital facilities element, updating its parks plan, and updating its development regulations and critical areas regulations. [Legal Issues 5, 6, and 7]

B. Consistency of Water and Sewer Plan and TIP with Comprehensive Plan – Legal Issue Nos. 1, 2, and 3

The Board's Prehearing Order states the Legal Issues concerning the Water and Sewer plans and the TIP as follows:

> *<u>Legal Issue No. 1</u>: Did the City of Sultan substantially interfere with the goals of the Growth Management Act, specifically, RCW 36.70A.020(1), (3), & (12) by failing to perform its activities and make capital budget decisions in conformity with its comprehensive plan per RCW 36.70A.120 by:*

[5] See, *Fallgatter I v. City of Sultan*, CPSGMHB Case No. 04-3-0021, Final Decision and Order (June 13, 2005), Comp Plan update and parks regulations; *Fallgatter II v. City of Sultan*, CPSGMHB Case No. 05-3-0008, consolidated with *Fallgatter III v. City of Sultan*, CPSGMHB Case No 05-3-0010c, Order of Dismissal (June 24, 2005), Comp Plan amendments and Urban Center Zone regulations - settled; *Fallgatter IV v. City of Sultan*, CPSGMHB Case No. 05-3-0035, Order of Dismissal (Oct. 27, 2005), water and sewer availability procedure – repealed; *Fallgatter VI v. City of Sultan*, CPSGMHB Case No. 06-3-0017, Order on Motions (June 29, 2006), stormwater management plan – pending; *Fallgatter VII v. City of Sultan*, CPSGMHB Case No. 06-3-0023, Order of Dismissal (June 29, 2006), annexation.

a) Adopting a Transportation Improvement Plan inconsistent with the Comprehensive Plan?
b) Adopting a Sewer General Plan inconsistent with the Comprehensive Plan?
c) Adopting a Water System Plan inconsistent with the Comprehensive Plan?

Legal Issue No. 2: In adopting Ordinances 897-05 and 898-05, adopting sewer and water plans respectively, did the City of Sultan substantially interfere with the public participation goal of RCW 36.70A.020(11) by failing to adhere to RCW 36.70A.035, .130 & .140 which require procedures that are "reasonably calculated" to provide "effective" notice and "broad dissemination to the public" of proposals and alternatives?

Legal Issue No. 3: In adopting Ordinances 897-05 and 898-05 did the City of Sultan substantially interfere with the goals of the GMA, specifically RCW 36.70A.020(1) & (12), by failing to concurrently amend the Comprehensive Plan as required by RCW 36.70A.070 & .130(2)(b)?

Applicable Law

RCW 36.70A.120 requires:

> Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.

RCW 36.70A.070 establishes the required elements of comprehensive plans and states that "the plan shall be an internally consistent document" and "shall be adopted and amended with public participation as provided in RCW 36.70A.140." Required elements include a capital facilities plan element [.070(3)], a utilities element [.070(4)], a transportation element [described in great detail at .070(6)], and a park and recreation element [.070(8)].

RCW 36.70A.140 requires procedures that ensure public participation:

> Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments….

RCW 36.70A.130(2) states that the public participation program adopted by a city in compliance with RCW 36.70A.140 shall "identify procedures whereby updates, proposed amendments or revisions of the comprehensive plan are considered by the governing body of the [city] no more frequently than once every year." The subsection explains: "all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained." An exception is made for "the amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a [city] budget."

Discussion and Analysis

Positions of the Parties

Petitioners contend that Sultan's 2005 TIP adopted by Resolution 05-18 is inconsistent with the 2004 Comp Plan and non-compliant with specific GMA requirements for the transportation element of the comprehensive plan. Fallgatter PHB at 9-11. They point out that the TIP adds new projects at significantly increased costs without amending the financing plan. *Id*. at 11. Petitioners assert that the TIP fails to address the "estimated traffic impacts to state owned transportation facilities resulting from land use assumptions" [.070(6)(a)(ii)], "forecasts of traffic for at least ten years based on the adopted land use plan" [.070(6)(iii)(E)], or the required "analysis of funding capability to judge needs against probable funding resources" [.070(6)(iv)(A)]. *Id.* at 10. In particular, Petitioners point to the Industrial Park Master Plan, which is included in the Comp Plan, and state that the bike trails, rail spur, and specific street improvements referenced in the Industrial Park Master Plan are not incorporated in the TIP. *Id*. at 11-12.

The City responds that the TIP and the GMA-required capital facilities plan must be coordinated but are not the same. City Response, at 9-10. The City asserts that it is required, under RCW 35.77.010, to annually "adopt a comprehensive transportation program for the ensuing six calendar years" – the TIP. The TIP is forwarded to the Department of Transportation to be included in the regional transportation program. *Id*. According to the City, "the two plans evolve together." The City reasons that "the capital facilities element [of the Comp Plan] serves as the basis for the TIP, and as the TIP is approved by the Department of Transportation, then the multiyear financing plan within the transportation element must be coordinated with the plan as developed." *Id*. at 10. In short, according to the City, any inconsistencies between the plans should be resolved by amending the Comp Plan *after* rather than *before* Department of Transportation approval of the TIP.

Petitioners similarly challenge the General Sewer Plan and Water System Plan. First, Petitioners contend (and the City conceded at the Hearing on the Merits) that the target populations are inconsistent. Fallgatter PHB at 14. The Comp Plan target population for the year 2025 is 11,119. The Sewer Plan target service population for 2025 is 7,200. The Water Plan target service population for 2025 is 6,750. Petitioners argue that because the target service populations are inaccurate, there are also discrepancies in capital facility planning, capacity requirements, and projected costs. *Id*. at 16-20. Further, according to

Petitioners, the service boundaries contemplated in the Water and Sewer Plans are not consistent with the Urban Growth Area [**UGA**] adopted in the Comp Plan. *Id*. at 20-21.

In support of their argument that the plans must be consistent, Petitioners point out that the Task Orders directing the consultants to complete the Water and Sewer Plans provided:

> [Sewer Plan] 3. Reconcile the land uses and proposed GMA additions adopted by the City in the 2004 Comprehensive Plan with the Sewer Plan documentation and revise as necessary.
>
> [Water Plan] 2. Reconcile the land uses and proposed GMA additions adopted by the City in the 2004 Comprehensive Plan with the Water Plan documentation and revise the figures as necessary, including the schematic layout of the water treatment plant as provided electronically by the City.

Id. at 16, citing Ex. 21 and 22.

The City responds that its Sewer Plan was adopted under Chapter 90.48 RCW and submitted to the Department of Ecology for review and approval under a WAC that contains its own population projection requirements and does not require that GMA population targets be used. City Response at 11-12. The Water Plan, according to the City, was adopted under Chapter 43.20 RCW and submitted to the Department of Health for approval. Under the applicable WAC, the Water Plan must include future population and water demand for a consecutive six-year and final twenty-year planning horizon. *Id.* at 13. According to the City, there is no requirement that GMA-allocated population figures be used. *Id*. at 14.

Petitioners then argue that the City failed to follow GMA-mandated public participation procedures in adopting its Water and Sewer Plans. Fallgatter PHB at 23 [Legal Issue 2]. Petitioners point out that the City knew the plans were inconsistent with the Comp Plan because of the much lower population service target, but opted instead for a public process after the fact, adding to each ordinance a proviso as follows:

> [Sewer Plan] 3. In the event there is any inconsistency between the General Sewer Plan as accepted and approved by the Department of Ecology and the utility element of the City's comprehensive plan, the City shall undertake a public participation process and update the utility element of its comprehensive plan to be consistent with the General Sewer Plan as accepted and approved by the Department of Ecology.
>
> [Water Plan] 3. In the event there is any inconsistency between the Water System Plan as accepted and approved by the Department of Health and the utility element of the City's comprehensive plan, the City shall undertake a public participation process and update the utility element of

> its comprehensive plan to be consistent with the Water System Plan as accepted and approved by the Department of Health.

*Id***.** at 23, citing Ex. 45 and 46.

Petitioners contend that the City's failure to amend the Comp Plan concurrently with adoption of the Water and Sewer Plans and TIP violates RCW 36.70A.130(2)(b) which states that "all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained." [Legal Issue 3]. Petitioners point out that a Comprehensive Plan Amendment Petition was filed by the City Planning Department on June 30, 2005, which should have formed the basis for this concurrent review. *Id.* at 24-25, Ex. 1.

The City responds that the Water and Sewer Plans, because they were adopted under statutes other than the GMA, did not require GMA public process. Nonetheless, according to the City, each of the plans "received extensive public review and an extensive public process." City Response, at 14-15. [See details set out in ordinances]. The City acknowledges that there must be compatibility between its Water Plan and Comp Plan and between its Sewer Plan and Comp Plan but argues that the required consistency, and necessary Comp Plan amendment public process, may be achieved *after* approval of the specialized plans by the reviewing agencies. *Id.* at 15-16.

Board Discussion

The Growth Management Act, from its inception, was built around the concept of coordinating urban growth with availability of urban infrastructure. Determining that "uncoordinated and unplanned growth" posed a threat to the state and its citizens [RCW 36.70A.010], the Legislature created a framework that requires consistency between urban land use planning and coordinated provision of capital facilities and urban infrastructure. *See, e.g.*, RCW 36.70A.070(3), .110(3). The "urban growth" and "public facilities" goals used to guide local comprehensive plans are cross-referenced:

> (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
>
> (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Managing growth in the Central Puget Sound region is now done exclusively under Chapter 36.70A RCW.[6] Thus, the Board has ruled that "functional plans" such as sewer or water system plans or TIPs (developed and adopted pursuant to other Titles of the

[6] *See WSDF IV*, at 11.

RCWs) *that are relied upon and intended to fulfill, in whole or in part, GMA requirements*, such as the Capital Facility Element requirements, must be included directly, or incorporated by reference, into the jurisdiction's GMA Plan. *See, West Seattle Defense Fund v. City of Seattle* (***WSDF IV***), CPSGMHB Case No. 96-3-0033, Final Decision and Order (Mar. 24, 1997), at 28. At the very least, such functional plans must be *consistent with* a city's comprehensive plan. While state agencies have reviewing authority, in some instances, and provide grant funding in others, state agencies are also required to comply with local comprehensive plans. RCW 36.70A.103.

At the Hearing on the Merits, Sultan characterized its Water and Sewer Plans and TIP as "management" documents, rather than GMA planning activities. The Board addressed a similar argument pertaining to other types of "specialized plans" in *West Seattle Defense Fund v. City of Seattle* (***WSDF III***), CPSGMHB Case No. 95-3-0073, Final Decision and Order (Apr. 2. 1996), at 10: "[T]he GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises *disconnected* from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan." (Emphasis supplied). The City of Sultan's Water and Sewer Plans and TIP do not exist in a vacuum; they are part and parcel of the City's system for accommodating and managing growth under the GMA.

<u>The TIP:</u>

At the Hearing on the Merits, the City of Sultan conceded that the TIP adopted in Resolution 05-18 is not consistent with its Comp Plan, but argued that the TIP was enacted for a non-GMA purpose, pursuant to another statute, so that GMA consistency is not required. In addition, the City asserted at the Hearing on the Merits that even though it attached its TIP to its Comp Plan, the TIP is not part of the Plan but simply and "Appendix."

As the Board has ruled in several prior cases, while a transportation improvement program [TIP] that addresses project financing over six years may be a discrete document from the Transportation or Capital Facilities Element of a comprehensive plan, a challenge to a TIP or an amendment to a TIP is not beyond the scope of the Board's jurisdiction. *Kent CARES II v. City of Kent*, CPSGMHB Case No. 02-3-0019, Order on Motions (Mar. 14, 2003), at 8; *McVittie v. Snohomish County*, CPSGMHB Case No. 99-3-0016c, Final Decision and Order (Feb. 9, 2000), at 20.

The Board addressed this question fully, most recently, in *Kap v. City of Redmond* ***[Kap]***, CPSGMHB Case No. 06-3-0002, Order of Dismissal (Apr. 12, 2006). In *Kap*, the City of Redmond moved to dismiss a challenge to its TMP [Transportation Management Program] on the grounds that the TMP is not a comprehensive plan, development regulation or permanent amendment thereto, but rather a "functional plan" that does not fall within the jurisdiction of the Board. In denying the jurisdictional challenge, the Board stated:

> The City's characterization of the TMP as a "functional plan" and not a GMA plan, development regulation or amendment thereto, is a misnomer. The TMP "functions" as a supplement or amendment to the City's Transportation Element.

Kap, at 2. The Board concluded in *Kap* that Redmond's TMP "is precisely the type of land use planning that the GMA was created to coordinate and manage." *Id*. at 4.

Contrary to Sultan's assertion, the GMA requirements for the transportation element of a city's comprehensive plan expressly mandate consistency between the transportation element and the six-year plans required by RCW 35.77.010 for cities and RCW 47.05.03 for the state.[7] The GMA specifically sets out language that a six-year plan (the TIP) required under RCW 35.77.010 *must be consistent with the transportation element*. RCW 36.70A.070(6)(c).[8] The City cannot sidestep this mandate of consistency.

In addition, the City's record is replete with Council-staff colloquy, Comp Plan references, and other documents acknowledging the required linkages between the TIP and the Comp Plan. *See, e.g.*, Fallgatter PHB, Ex. 2, 4, 6, 13 (p. 211), and 14 (p. 208). From City Council colloquy (Ex. 2), the Board interprets the City's concern to be based, in part, on the procedural burden of concurrently amending its Comp Plan and Capital Facilities Plan annually as it updates its TIP. The Board recognizes that the TIP is updated as often as annually, and that the City must adopt an efficient mechanism [perhaps based on models developed by other cities] to cross-reference changes in project plans and financing strategies between the TIP and the Comp Plan.

Here, Sultan has "attached" its TIP to its Comp Plan, but the City argued at the Hearing on the Merits that the TIP was not part of the Plan but merely an "Appendix." The fact remains that the TIP and the Comp Plan are ***inconsistent*** in relation to the needed projects and their financing. In view of the current reorganization of Sultan's planning function, the Board does not mandate adoption of any particular process, but **remands** the TIP for action by the City that will comply with the GMA, namely, that the TIP is consistent with the transportation element of Sultan's Comp Plan.

<u>Water System Plan</u>

The City of Sultan operates its own water system under the municipal authority granted to it in Chapter 35.77 RCW. By Ordinance 898-05, the City adopted a Water System Plan pursuant in part to WAC 246-290, which requires a purveyor's Water System Plan every six years. Review and approval of such plans by the Department of Health is a pre-condition for receiving certain state funds for water system improvements. The Comp

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[7] RCW 36.70A.070(6)(a)(iv)(B): "A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities ….The multiyear financing plan shall be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.05.030."

[8] RCW 36.70A.070(6)(c): "The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities … and RCW 47.05.030 for the state, must be consistent."

Plan adopts a twenty-year population target of 11,000 within the City of Sultan and its delineated twenty-year UGA. The Water Plan adopts a twenty-year target population of 6,750, while *recognizing a UGA capacity* for 11,000. Water Plan, Table 2-8. The City's Water Plan population target is a straight-line projection from current growth – 123 people [less than 50 households] per year, as opposed to the **County's** growth allocation which is binding upon the City.[9] It is unclear from the maps attached to the Water Plan selected by the City whether the projected water service area is the same geographical area as the Sultan UGA.

Work on the Sultan Water Plan commenced prior to adoption of Sultan's 2004 update of its Comp Plan, and the Water Plan was finally adopted in December, 2005; the City's population target and UGA boundaries adopted and assigned by Snohomish County did not materially change during this period.[10] Nonetheless, the City adopted the Water Plan based upon population figures contrary to its allocated population and with a service area that apparently does not correspond to the UGA adopted by the County for the City. The Board notes that RCW 43.20.260 provides that water system service under a plan submitted for Department of Health review must be "consistent with the requirements of any comprehensive plan or development regulations adopted under chapter 36.70A RCW." The Board does not have jurisdiction to determine whether the Sultan Water Plan complies with Chapter 43.20 RCW or with Department of Health regulations, as the Board's review is limited to determining consistency with GMA plans and regulations; however, the Board notes that the importance of the GMA's coordinated planning mandate is acknowledged in the related statute, which requires conformity with the Comp Plan.

Under the GMA, cities have a duty to accommodate, over a twenty-year period, the growth allocated to them in the urban territory assigned to them.

> [T]he Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA.

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[9] Even assuming that none of Sultan's city and urban residents currently served by private wells connects to Sultan's water system over the next twenty years, the Water Plan target number is still significantly below the GMA allocation.

[10] As the Presiding Officer indicated orally at the Hearing on the Merits, the Board takes official notice of two Snohomish County adoptions: Snohomish County Ordinance No. 05-082 (December 21, 2005), establishing the Sultan UGA [Supplemental Exhibit 1]; and Snohomish Countywide Planning Policies updating population allocations [Supplemental Exhibit 2]. These actions, undertaken as part of the County's mandated ten-year UGA and Comprehensive Plan update, resulted in no material change to the Sultan target population and only a 50-acre expansion of the Sultan UGA.

Corrine R. Hensley v. City of Woodinville, CPSGMHB Case No. 96-3-0031, Final Decision and Order (Feb. 25, 1997), at 8. "Urban governmental services" are defined in the GMA as "specifically including storm and sanitary sewer systems [and] domestic water systems …." RCW 36.70A.030(19). As with the TIP, the City of Sultan's record concerning the Water and Sewer Plans is replete with references to the interlinkage and required consistency of the functional plans with the Comp Plan. See, e.g., Fallgatter PHB, Ex. 3, 19, 20, 21, 22, 34, 38, and 48.

The Board finds that Petitioners **have met their burden of proving** that the City's adoption of the Water Plan does not comply with RCW 36.70A.120. Petitioners provided evidence that the Water Plan proposed to serve a target twenty-year population which is 40% lower than the Comp Plan target in a service area that appears to not encompass the whole UGA. At the Hearing on the Merits, the City of Sultan conceded the population inconsistency and had no response with respect to the service territory. The Board finds that the City of Sultan, in adopting the 2005 Draft Water System Plan, **did not comply** with the RCW 36.70A.120 mandate to make its water planning decisions in conformity with its comprehensive plan and **was not guided by** GMA planning goals (1) Urban growth and (12) Public facilities and services.

General Sewer Plan

Like the Water Plan, Sultan's Sewer Plan is based on a target twenty-year population significantly less than the population allocated and adopted in the Comp Plan. While the Comp Plan 2025 population target is 11,000, the Sewer Plan projects a 2025 service population of only 7,200.[11] It is not clear from the attached maps whether the twenty-year sewer service projections contemplate service to the whole of the assigned UGA. The City concedes to these inconsistencies and ambiguities. Nonetheless, the City adopted the Sewer Plan based upon population figures contrary to its allocated population and with a service area that apparently does not correspond to the UGA adopted by the County for the City.

As with water systems, the GMA contemplates that sewer systems will be available "concurrently" with land development at urban densities within the urban area. Under the GMA, the City must match land use planning and infrastructure development by means of "comprehensive" planning that provides capacity to serve the total assigned area and allocated population within the 20-year planning horizon. In *Fallgatter IV v. City of Sultan*, CPSGMHB Case No. 05-3-0035, Order of Dismissal [12] (Oct. 27, 2005), at 3, the Board explained:

[11] Even assuming that none of Sultan's in-city residents currently served by septic systems connects to sewer over the next twenty years (*see*, Fallgatter PHB, Ex. 44), the Sewer Plan target number is still significantly below the GMA allocation. As to future growth, the City's Comp Plan provides "septic systems will not be used in development projects within the Sultan urban growth area." *Id*. Ex. 42.

[12] *Fallgatter IV* was dismissed because the City repealed the sewer and water availability ordinance that had been challenged, rendering the challenge moot.

> The Board notes that the City does have an affirmative duty to implement its comprehensive plan. The GMA is clear – the City must have development regulations and make capital budget decisions that are consistent with, and implement, its Plan. *See* RCW 36.70A.040(3)(d), .120 and .130(1)(d). It is also clear that *over the time horizon* of its Plan, the City of Sultan has a duty to *ultimately* provide urban services, including water and sewer services, for those urban areas within the "existing UGA." Nonetheless, the City has discretion as to how and when [within the Plan's time horizon] it chooses to provide the required urban services.

The Board recognizes that the timing and precise location of development can not be predicted with certainty, and cities will want to guard against premature commitment of public funds. Thus, to prevent the premature commitment of funds, Sultan's consultants wisely set a conservative six-year capital improvement program. However, long-range, coordinated planning *is the Legislature's choice* for reducing the fiscal and environmental risks of haphazard development. This long-range, coordinated planning is the reason that the GMA was initially adopted and provides the foundation for the planning decisions of cities and counties throughout the State. By failing to look at the "big 20-year picture" the City fails to comply with one of the most basic tenets of the GMA.

The Board finds that Petitioners **have met their burden of proving** that the City's adoption of the Sewer Plan does not comply with RCW 36.70A.120. The Board finds that the City of Sultan, in adopting the 2005 Draft General Sewer Plan, **did not comply** with the RCW 36.70A.120 mandate to make its sewer planning decisions in conformity with its comprehensive plan and **was not guided by** GMA planning goals (1) Urban growth and (12) Public facilities and services.

<u>Public Process and Concurrent Comp Plan Amendment</u>

By adopting Water and Sewer Plans which are inconsistent with and do not conform to the Comp Plan population targets and urban service areas, and then proposing to amend its *Comp Plan* to resolve these inconsistencies, the City has turned the GMA process on its head. Petitioners urge the Board to find that Sultan has unlawfully truncated the public process required for GMA enactments [RCW 36.70A.035, .130 and .140] and has not complied with the requirement to consider GMA plan amendments concurrently on an annual basis [RCW 36.70A.070 and .130(2)(b)].

If Sultan's Water and Sewer Plans had been properly based on GMA-adopted population targets and service areas, adoption of those ordinances using the regular City public notice and hearing process [augmented by applicable state agency requirements, if any] would most likely be adequate to satisfy the public process procedures under the relevant statutes. However, to the extent the City relies on those plans to fulfill GMA

requirements,[13] such as facility inventories, needs assessment, identifying priorities and financing options, the City must adhere to the GMA's public participation requirements. Such functional plans are intended to *implement* GMA comp plans, *not amend* them. When a Water or Sewer Plan is revised or updated, if it is relied upon to provide required components of the Comp Plan, it is effectively a Comp Plan amendment. As such, the pending and proposed amendments should be docketed for review during the annually-scheduled Comp Plan amendment schedule. Changes to capital facilities schedules arising from the update of functional plans could also be folded into the City's annual budget review cycle. Under either option, conformity, consistency and coordination among the Comp Plan and the Water and Sewer Plans is maintained.

The Board finds that the City's uncoordinated and "backward"[14] process does not comply with the GMA public process of RCW 36.70A.035, .130, .140 or the .130 options available for amending comprehensive plans. The Board anticipates that Sultan will need to amend its Water and Sewer Plans [*i.e.*, regarding population and service area], so as to bring them into compliance with the Comp Plan, and to clearly incorporate by reference these plans into its Comp Plan to fulfill the GMA's mandatory requirements for the Capital Facilities Element of its Plan.[15]

At the Hearing on the Merits, the City referenced a work program of planning tasks to be undertaken in 2006 – "City of Sultan Planning Agency Schedule for 2006 Comprehensive Plan Updates/Amendment and Development Regulations Revisions" [**Work Plan**], dated March 21, 2006.[16] The City referred to the Work Plan to demonstrate its good-faith efforts to address complex planning requirements. Water and Sewer Plan amendments are docketed in the Work Plan as tasks 1 and 2, as follows:

> 1. Complete Update of the Water System Plan to be consistent with Comprehensive Plan and incorporate the Water System Plan as an Appendix to the Comprehensive Plan.

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[13] This is clearly the case here, as the City's Comp Plan relies largely on incorporation-by-reference of the TIP, Water and Sewer Plans, and other functional plans to fill out the GMA-required detail of its Capital Facilities, Utilities, and Transportation Elements.

[14] The City expressed its intent to seek approval of its Water and Sewer Plan first, then revise its Comp Plan to reflect the functional plan provisions. *Query,* which population targets would be used in such revision, since the population target in the Water Plan differs from that in the Sewer Plan, and both are different from the Comp Plan?

[15] Amending the Sultan Comp Plan to reduce the allocated target population or designated UGA would require negotiation with Snohomish County and with other Snohomish County cities to amend the Snohomish Countywide Planning Policies.

[16] The Work Plan referenced by the City at the Hearing on the Merits is attached to this FDO as Appendix B. This document was submitted as an exhibit in *Fallgatter VI*, as Attachment 4 to Petitioners' "Response to City of Sultan's Motion to Dismiss as to Ordinances 904-06 and Task Order 2006-1 Amendment 1."
The Board notes that the Work Plan is apparently a rough outline of anticipated action as of March 2006, and that, at the Hearing on the Merits, the City indicated the time-line had already slipped by 2 to 3 months due to planning function reorganization. The Board recognizes that the Work Plan is not a binding document. The Board cites to this Work Plan *as an indication of the City's good-faith efforts* to bring its planning activities into statutory alignment.

2. Complete Update of the General Sewer Plan to be consistent with the Comprehensive Plan and incorporate the General Sewer Plan as an Appendix to the Comprehensive Plan.

Conclusion

The Board finds and concludes that Petitioners have **met their burden of proving** that the City of Sultan TIP [Resolution 05-18], the 2005 Water System Plan [Ordinance No. 897-05], and the 2005 General Sewer Plan [Ordinance No. 898-05], are inconsistent with the City of Sultan 2004 Comprehensive Plan. The actions **do not comply** with RCW 36.70A.120 and .035, .140, and .130. The Board is left with a definite and firm conviction that a mistake has been made and that adoption by the City of these functional, but inconsistent, plans was **clearly erroneous** as set forth above.

The Board finds and concludes:

1. RCW 36.70A.120 requires the City of Sultan to "perform its activities and make capital budget decisions in conformity with its comprehensive plan."

2. The 2005 TIP [Resolution 05-18], 2005 Water System Plan [Ordinance 898-05] and General Sewer Plan [Ordinance 897-05] are each planning activities that guide capital budget decisions of the City of Sultan. The guidance provided by these documents is not in conformity with or consistent with the City of Sultan's 2004 Comprehensive Plan.

3. The City of Sultan acknowledges that the 2005 TIP [Resolution 05-18], 2005 Water System Plan [Ordinance 897-05] and 2005 General Sewer Plan [Ordinance 898-05] are inconsistent with its 2004 Comprehensive Plan. In particular, the Water Plan and Sewer Plan are based on twenty-year population targets and service areas which are inconsistent with those allocated by Snohomish County under RCW 36.70A.110(2) and adopted by the City of Sultan in its 2004 Comp Plan.

4. The City of Sultan 2006 Work Plan [Appendix B] contemplates enacting a 2006 TIP and amending the Water and Sewer Plans. The 2006 Work Plan also contemplates revisions to the Capital Facilities Plan. Those revisions should (a) align the Capital Facilities Plan with functional plans and (b) incorporate by reference those plans to fulfill requirements of RCW 36.70A.070(3) and (6).

5. The Comp Plan amendment process shall conform to the public participation process for plan amendments as set forth in RCW 36.70A.130.

6. Therefore the Board will enter an Order Finding Noncompliance [regarding the City of Sultan's 2005 TIP and Water and Sewer Plans] and remand Resolution 05-18 and Ordinances 897-05 and 898-05 to the City of Sultan to take legislative action consistent with the GMA and with this order.

7. The Board will set forth a compliance schedule within which the City shall take the required action.

The Board **remands** the TIP and the Water and Sewer Plans to the City for action consistent with this order. The City's Work Plan already encompasses adopting a 2006 TIP, amending its Water and Sewer Plans, and updating its Capital Facilities Plan; the Board is therefore satisfied that the remand creates no special hardship for the City. Nevertheless, in view of the City's ongoing reorganization of its planning function (as described by the City at the Hearing on the Merits, and see, *Fallgatter VI* PFR, Ordinance No. 904-06), as well as the extent of its work program, the Board has determined that these are unique and complex circumstances for the City and will set a **twelve-month compliance schedule** and require quarterly reports.

C. Failure to Act

The Board's Prehearing Order states Legal Issue Nos. 5, 6, and 7 as follows:

> *Legal Issue No. 5: Did the City of Sultan violate the goals of the GMA, specifically, RCW 36.70A.020(1), (3) & (12) by failing to act to amend the Capital Facilities Plan in a manner which complies with RCW 36.70A.040 & .070?*
>
> *Legal Issue No. 6: Did the City of Sultan violate the goals of the GMA, specifically, RCW 36.70A.020(1), (9) & (12) by failing to act to update the Parks element of its plan to include consideration of a revised park impact mitigation fee in a manner which complies with RCW 36.70A.040 & .070?*
>
> *Legal Issue No. 7: Did the City of Sultan substantially interfere with the goals of the GMA, specifically RCW 36.70A.020(1),(3),(5),(7) & (12), by failing to review and revise development regulations as required by RCW 36.70A.040 & .130?*

Applicable Law

RCW 36.70A.070 establishes the required elements of comprehensive plans and states that "the plan shall be an internally consistent document" and "shall be adopted and amended with public participation as provided in RCW 36.70A.140." Required elements include a capital facilities plan element [.070(3)], and a park and recreation element [.070(8)].

RCW 36.70A.130(1) requires periodic review and evaluation of comprehensive plans and development regulations. "The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances." .130(1)(c). The statute sets a December 1, 2005, deadline for cities within Snohomish County to complete the required review, with additional time allowance for "substantial progress toward compliance." .130(8), (9).

Discussion and Analysis

Positions of the Parties

Petitioners contend that the Capital Facilities Plan [**CFP**] is woefully inadequate and fails to provide any meaningful basis for the City's financial planning. Fallgatter PHB, at 28-32 [Legal Issue 5]. Petitioners fault the CFP with regard to water and sewer provisions, Industrial Park Master Plan projects, garbage collection capital needs, and general government buildings. *Id.*

With respect to the Parks element of the Comp Plan, Petitioners contend that, based on the LOS established in the plan, the Parks concurrency ordinance, and the City's recent growth, the City has reached the limits of its current plan. *Id*. at 30-31 [Legal Issue 6]. Petitioners urge that the City must revise its park impact mitigation fee, adopt a lower LOS standard, or both.

Petitioners' final legal issue concerns the City's failure to timely complete its required review and update of its development regulations and critical areas ordinances. *Id.* at 33-35 [Legal Issue 7].

The City responds that a "failure to act" challenge must be based on a statutory deadline. City Response, at 16. The Board's rules at WAC 242-02-220 permit:

> (6) A petition relating to the failure of a [city] to take action by a deadline specified in the act …

The City points out that there is no statutory deadline for updating the capital facilities element or parks element of its 2004 adopted Comp Plan. *Id.* The City asserts that it "intends to update its capital facilities plan as necessary in accordance with its budget cycle," and that it is in the process of updating the parks element of its comprehensive plan. *Id*. The City of Sultan acknowledges that it has not completed the review and update of its development regulations (including critical areas ordinances) mandated by RCW 36.70A.130(1). *Id.* at 17.

In rebuttal, Petitioners point to the City's own "self-imposed deadlines," indicating that under the City's adopted procedures, Comp Plan amendments initiated by the City Planning Department, are to be completed "in the current year." Fallgatter Reply, at 9, citing Ex. 1.

Board Discussion

Petitioners Fallgatter and Kirkman, in Legal Issues 5, 6 and 7, challenge the City of Sultan's failure to update its capital facilities plan, its parks plan and parks impact fees, and its development regulations including critical areas ordinances. Petitioners rightly point to the GMA standards for a GMA-compliant capital facilities plan and park plan

[RCW 36.70A.070(3) and (8)]. However, the GMA contains no deadlines by which CFPs and Parks plans must be updated.

Petitioners rely on *COPAC-Preston Mill, Inc., v. King County*, CPSGMHB Case No. 96-3-0013c, Final Decision and Order (Aug. 21, 1996), at 11-12, where the Board required King County to meet the deadlines it had imposed on itself in its adopted comprehensive plan, or else amend its plan. By contrast, the City of Sultan's commitment to complete certain reviews "in the current year" is not a part of its Comp Plan or of the Act; thus the Board cannot enforce it as a GMA deadline.

The Board notes the City's itemization of anticipated review of its CFP and Parks plan in its Work Plan for this year. The need for this review having been acknowledged, the Board presumes the work will move forward, that the City will adopt and follow an appropriate public participation process, and that consistency with the Comp Plan and CFP in their annual review cycles will be achieved. As the Board has stated:

> [T]he Board will never presume that future actions of government will be taken in bad faith. Instead, the Board will assume that prospective governmental actions will be taken in good faith in an effort to comply with the Act. This assumption will be made regardless of whether the jurisdiction has been repeatedly found in noncompliance in the past.

Pilchuk II v. Snohomish County, CPSGMHB Case No. 95-3-0047, Final Decision and Order (Dec. 6, 1995), at IV, 118; *Central Puget Sound Regional Transit Agency v. City of Tukwila*, CPSGMHB Case No. 99-3-0003, Final Decision and Order (Sept. 15, 1999), at III.C.9.

The Board can and will require the City to comply with the statutory deadline for review and update of development regulations and critical areas ordinances. The Board finds that the City **has not complied** with the requirement of RCW 36.70A.130(1) to review and revise, if necessary, its development regulations, including its critical areas regulations, within the timeline established by the statute. However, the Board concludes that the City of Sultan is making substantial progress towards completing the required review and update.[17]

Conclusion

The Board concludes that Petitioners have failed to carry their burden of proving Legal Issues No. 5 and 6. Legal Issues 5 and 6 are **dismissed.**

The City having **conceded that the City had not acted to complete the adoption of its implementing development regulations and critical area ordinance by the statutory deadline, the Board will issue an Order Finding Noncompliance** regarding a failure to

[17] In the Work Plan [Appendix B], the schedule for Sultan's adoption of a new critical areas ordinance was set at April 13, 2006. At the hearing on the Merits, the City represented that its schedule has slipped by 2 to 3 months and that it has added the requirement to update its Shoreline Master Program.

act to update the City's implementing development regulations. The Board's Order includes a compliance schedule and date for a compliance hearing.

RCW 36.70A.300(3)(b) provides, in relevant part:

> The board shall specify a reasonable time not in excess of one hundred eighty days or *such longer period as determined by the board in cases of unusual scope or complexity* within which the … city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

While completing its development regulations and critical areas ordinance may not require a lengthy compliance period, the Board takes into consideration the full "scope and complexity" of actions the City needs to accomplish to complete its Work Plan and comply with this, and other, Orders. In particular, the Board considers that the City is reorganizing its planning function and may adopt or has recently adopted new GMA public participation procedures. The Board therefore extends the compliance period beyond the 180-days to a full year and requires quarterly compliance updates. If the City acts prior to the date set for the compliance hearing, the City could move to accelerate the compliance hearing date or seek an order of partial compliance.

The only issue at the compliance hearing on the Failure to Act order will be whether the City of Sultan completed adoption of its implementing development regulations and critical areas regulations. The substance of those enacted regulations will not be part of the compliance proceeding[18] in this case – CPSGMHB Case No. 06-3-0003, *Fallgatter V v. City of Sultan*.

The Board notes that Legal Issues 2, 5, and 6 challenge the City's failure to provide effective public participation. In light of the Board's decision to issue a Finding of Noncompliance related to the City of Sultan's failure to act with respect to its implementing development regulations, the Board anticipates that opportunities for citizen participation will be incorporated in the City's process for adopting the needed regulations. The City's Statement of Actions Taken to Comply should indicate the measures taken to meet the GMA public participation requirements.

In enacting legislation in response to the Board's decision, the City shall provide for public participation that is appropriate and effective under the circumstances presented by the Board's order. See RCW 36.70A.140. The Petitioners, as provided in WAC 242-02-019(2), may participate in the compliance hearing and, as interested parties in this matter and in the growth of the City of Sultan.

The Board finds and concludes:

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[18] The substance of any update to the City's implementing development regulations must be substantively challenged through a new petition for review.

8. RCW 36.70A.130(1)(a) required the City of Sultan to "take legislative action to review, and if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of [the GMA]" by December 1, 2005. *See* RCW 36.70A.130(4)(a), (8), (9).

9. The City of Sultan acknowledges that revisions and amendments are needed to its development regulations – specifically, update of critical areas regulations - to ensure that they comply with the requirements of the GMA. City Response, at 17. The City's Work Plan contemplates these revisions and updates in the first half of 2006. The City has stated that the Work Plan is currently three months behind schedule. Appendix B.

10. The City of Sultan concedes that the City **did not** fully adhere to the update requirements of RCW 36.70A.130(1) and (4) in that it has not acted to complete the update of its implementing development regulations.

11. Therefore the Board will enter an Order Finding Noncompliance – Failure to Act [regarding the City of Sultan's implementing development regulations and critical areas regulations].

12. The Board will set forth a compliance schedule within which the City shall take the required action to update and revise its implementing development regulations.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. Petitioners failed to carry their burden of proving Legal Issue Nos. 5 and 6. Legal Issues 5 and 6 are **dismissed**.

2. The City of Sultan's motion to dismiss Legal Issue No. 1(a) as untimely is **denied**.

3. Regarding Legal Issue Nos. 1, 2 and 3, the City of Sultan's adoption of Resolution 05-18, Ordinance No. 897-05 and Ordinance No. 898-05 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.120, .035, .140, and .130 and **was not guided** by GMA planning goals RCW 36.70A.020(1) and (12).

4. The Board remands Resolution 05-18, Ordinance No. 897-05 and 898-05 to the City to take legislative action to comply with the GMA as set forth in this Order.

5. Regarding Legal Issue No. 7, the City of Sultan has **failed to act** to complete the revision and update of its comprehensive plan *implementing development regulations and critical areas ordinance* - and **has not fully complied** with the requirements of RCW 36.70A.130(1) and (4) regarding development regulations. Therefore, the City of Sultan is directed to take the necessary legislative action to comply with the revision and update requirements of RCW 36.70A.130(1).

6. RCW 36.70A.300(3)(b) allows the Board to extend the 180-day compliance schedule for a noncompliant jurisdiction if the Board determines that the case is one of unusual scope or complexity. **The Board finds that the City of Sultan's current circumstances make its task unusually complex**; therefore, the City of Sultan shall adhere to the following "extended" compliance schedule:

   - By no later than **April 30, 2007**, the City of Sultan shall take appropriate legislative action to comply with the review and revision requirements of RCW 36.70A.130(1) for its implementing development regulations and critical areas regulations.
   - By no later than **April 30, 2007**, the City of Sultan shall take appropriate action to ensure consistency of its Transportation Improvement Program, Water System Plan and General Sewer Plan with its Comprehensive Plan.
   - The City of Sultan shall file periodic reports with the Board indicating its progress toward achieving the required compliance. Such reports, at a minimum, should compare the actual status of the City's planning with the elements and timeline of any work plan adopted by the City. Compliance progress reports shall be filed every three months as follows: **September 20, 2006,**[19] **December 20, 2006,** and **March 20, 2007.**
   - The City of Sultan shall simultaneously serve a copy of its compliance progress report on Petitioners Jocelynne Fallgatter and Jeff Kirkman. Petitioners may file a response to the compliance progress report within seven days.
   - By no later than **May 20, 2007**, the City of Sultan shall file with the Board an original and four copies of the legislative enactment(s) adopted by the City of Sultan to comply with RCW 36.70A.130(1) and RCW 36.70A.120 along with a statement of how the enactments comply with the applicable statutory provisions and with this Order (**Compliance Statement**). By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.

[19] This first report might indicate the City's adoption of a public participation procedure pursuant to RCW 36.70A.140, establishment of annual review cycles for comprehensive plan amendment pursuant to RCW and CFP updates pursuant to RCW 36.70A.130(2), and adoption of a work plan which might address some or all of the issues raised in *Fallgatter V* [CPSGMHB Case No. 06-3-0003], *Fallgatter VI* [CPSGMHB Case No. 06-3-0017], and *Fallgatter VII* [CPSGMHB Case No. 06-7-0023].

The City shall simultaneously serve a copy of the legislative enactment(s), Compliance Statement and Compliance Index on Petitioners.

- By no later than **May 27, 2007**, Petitioners *may* file with the Board a Petitioners' Response to the City's compliance statement and the legislative enactments. Petitioners shall simultaneously serve a copy of such comment on the City.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. June 3, 2007** at the Board's offices. [Concerning the required update of development regulations and critical areas ordinance, the only issue at the Compliance Hearing will be whether the City has completed the review and revision required by RCW 36.70A.130(1). The substance of those legislative enactments will **not** be part of the compliance proceeding in this case – CPSGMHB Case No. 06-3-0003, *Fallgatter V v. City of Sultan.* Any challenges to the substance of those enactments must be brought through a timely filed petition for review.]
- If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Sultan takes some or all of the required legislative action prior to the May 20, 2007, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 29th day of June, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
Bruce C. Laing, FAICP
Board Member

_____
Edward G. McGuire, AICP
Board Member

_____
Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.[20]

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[20] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

APPENDIX – A

Chronology of Proceedings in CPSGMHB Case No. 06-3-0003

On January 20, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Petitioners Jocelynne Fallgatter and Jeff Kirkman (**Petitioners or Fallgatter**). The matter was assigned Case No. 06-3-0003, and is hereafter referred to as *Fallgatter V.* Board member Margaret A. Pageler is the Presiding Officer for this matter. Petitioners challenge the City of Sultan's (**Respondent** or **City**) adoption of Ordinances 897-05 and 898-05, adopting water and sewer plans, and Resolution 05-18, adopting the Transportation Improvement Program (**TIP**), as non-compliant with the GMA. Petitioners also challenge the failure of the City to act to update and amend various elements of its Comprehensive Plan and development regulations.

On January 25, 2006, the Board received a Notice of Appearance from Thom Graafstra, of Weed, Graafstra and Benson, Inc., P.S., on behalf of the City.

The Board issued its Notice of Hearing on January 27, 2006, setting the date for the prehearing conference **(PHC)** and a tentative schedule for hearing the case.

On February 21, 2006, the Board conducted the Prehearing Conference in the Room 2094 at Union Bank of California Building, 900 Fourth Avenue, Seattle. The conference was convened at 2:00 p.m. and adjourned at approximately 2:45. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference, with Board members Ed McGuire and Bruce Laing and Board extern Amie Hirsch also in attendance. Petitioners Jocelynne Fallgatter and Jeff Kirkman were present *pro se*. Thom Graafstra represented Respondent and was accompanied by Rick Cisar, City Administrator.

The Board discussed with the parties the possibility of settling or mediating their dispute to eliminate or narrow the issues. The parties indicated that they have begun discussion which may resolve some or all of Petitioners' issues. The parties agreed to continue further discussions and determine whether a request for a 90-day settlement extension might enable the parties to settle some or all of the dispute. The Board is empowered to grant settlement extensions for up to ninety days.

The Board then reviewed its procedures for the hearing. The Board **granted** the City's request to extend the time for filing its Index and adjusted the time for filing motions to supplement the record. The Board reviewed its rules concerning filing of exhibits and supplementation of the record. The Board requested the parties to identify items from the City's Index, when used as exhibits to their briefs, by numbers from the City's Index.

The Legal Issues presented were discussed in the context of the City's representation that it is proposing a series of tasks that may address some or all of Petitioners' issues.

On February 23, 2006, the Board issued its Prehearing Order, establishing a final schedule for briefing and hearing this matter, and the legal issues to be addressed.

Motions to Dismiss and to Supplement the Record

On March 29, 2006, the Board received Respondent City of Sultan's Motion to Dismiss as to Ordinances 897-05 and 898-05 (Issues 1, 2 and 3). The Board also received the City of Sultan's General Sewer Plan – July 2005 Draft - and Water System Plan – July 2005 Draft.

On April 7, 2006, the Board received Petitioners' Response to City of Sultan's Motion to Dismiss as to Ordinances 897-05 and 898-05, with 15 attached exhibits.

On March 29, 2006, the Board received Petitioners' "Motion to Supplement the Record and/or To Take Official Notice", attaching the Prothman Report [City of Sultan Organization Assessment, January 11, 2006] and the Auditor's Report [State Auditor's Report and Management Letter, November 10, 2005].

On March 29, 2006, the Board received Petitioners' Second Motion to Supplement the Record.

On April 3, 2006, the Board received "Sultan's Response to Motion to Supplement the Record and/or To Take Official Notice; and Sultan's Response to Second Motion to Supplement the Record."

On April 13, 2006, the Board received Petitioners' "Rebuttal to City's Response to Motion to Supplement the Record and/or To Take Official Notice; and Rebuttal to City's Response to Second Motion to Supplement the Record."

On April 24, 2006, the Board issued its Order on Motions denying the motion to dismiss, denying petitioners' first motion to supplement the record, and largely granting Petitioners' second motion to supplement the record.

On May 9, 2006, the Board received "Respondent's Supplementation of Index to the Record."

Briefing and Argument on the Merits

All prehearing briefing was timely filed. On May 11, 2006, the Board received "Petitioners' Prehearing Brief" with 60 exhibits - **Fallgatter PHB.**

On May 25, 2006, the Board received "Respondent City of Sultan's Response Brief," with 5 exhibits – **City Response.** The City Response contained several motions, including a motion to dismiss the case or to disqualify Board members.

On June 1, 2006, the Board received Petitioners' "Rebuttal to Respondent City of Sultan's Reponse Brief" with 5 exhibits – **Fallgatter Reply**.

On June 5, 2006, the Board issued its "Order Regarding Disqualification of Board," **denying** the motion to dismiss or disqualify but **granting** the motion to strike references to the prior settlement agreement between the parties.

The Board convened the Hearing on the Merits at 10:00 a.m., June 8, 2006, in the conference room adjacent to the Board's offices. Board member Margaret Pageler presided, with Board members Bruce Laing and Ed McGuire in attendance. Board law clerk Julie Taylor and Board externs Kris Hollingshead and Brian Payne were also present. Petitioners Jocelynne Fallgatter and Jeff Kirkman appeared *pro se*. Respondent City of Sultan was represented by its attorney Thom Graafstra, accompanied by City Administrator Rick Cisar. Court reporting services were provided by Eva Jankovits of Byers & Anderson. The hearing was adjourned at approximately 11:30 a.m. The Board did not order a copy of the transcript.

At the Hearing on the Merits, the Board invited additional briefing on reconsideration of the Order Regarding Disqualification. On June 20, 2006, the Board received "Supplemental Authorities Regarding Board Disqualification" filed by the City of Sultan; and "Motion for Reconsideration of Board's Order Regarding Disqualification of Board" filed by Petitioners. The motions for reconsideration are addressed in the Final Decision and Order.

APPENDIX – B

SULTAN PLANNING AGENCY MEETING
City of Sultan, Council Chambers – 319 Main Street

AGENDA
March 21, 2006 – 7:00 PM

CALL TO ORDER
Pledge of Allegiance

CHANGES TO THE AGENDA

COMMITTEE REPORTS AND STAFF PRESENTATIONS
- A Short Course in Planning Workshop – April 10, 2006

ACTION ITEMS:
- Election of Chairperson
- Election of Vice Chairperson
- Overview of Comprehensive Plan Amendment tasks and schedule (attached)
    - Review of Level of Service (LOS) requirements and Park Element review.
- Schedule for next meeting

DISCUSSION:

PUBLIC COMMENTS ON AGENDA ITEMS ONLY

PLANNING AGENCY COMMENTS

Adjournment

ADA NOTICE: The City of Sultan Community Center is an accessible building. Accommodations for persons with disabilities will be provided upon request.

319 Main Street, Suite 200 – PO Box 1199 – Sultan, WA 98294-1199
City Hall (360) 793.2231 – Fax (360) 793.3344
cityhall@ci.sultan.wa.us

CITY OF SULTAN PLANNING AGENCY SCHEDULE FOR 2006 COMPREHENSIVE PLAN UPDATES/AMENDMENT AND DEVELOPMENT REGULATION REVISIONS

The City of Sultan Planning Agency will commence review of the Comprehensive Plan Amendment Petitions accepted by the City on November 9, 2005. The Comprehensive Plan Amendments and Development Regulations Revisions to be considered by the Planning Agency include the following tasks:

1. Complete Update of the Water System Plan to be consistent with Comprehensive Plan and incorporate the Water System Plan as an Appendix to the Comprehensive Plan.

2. Complete Update of the General Sewer Plan to be consistent with the Comprehensive Plan and incorporate the General Sewer Plan as an Appendix to the Comprehensive Plan.

3. Complete Stormwater Plan and incorporate the Stormwater Plan as an Appendix to the Comprehensive Plan.

4. Update and Amend the Comprehensive Plan consistent with the Urban Growth Area (UGA) established by Snohomish County Council and Revised Regulations and Map. (Note: Based on Snohomish County Council's recent Motion No. 05-601 2 Municipal Areas have been added to our UGA. UGA Mapping is being updated and will be presented to City Council in March to begin the adoption process.)

5. Review, Update, and Amend Appendix B: Level of Service (LOS) for Transportation, Parks, Police, Water, and Wastewater, etc. to determine if our current standards are required, adequate, and/or reasonable.

6. Update and Amend as needed Transportation Element of Comprehensive Plan and adopt Annual TIP (Transportation Improvement Plan).

7. Amend and Update Park Element of Comprehensive Plan.

8. Amend and Update Capital Facilities Element of Comprehensive Plan, Amend and Update City's Capital Facilities Plan.

9. Approve and incorporate Sultan School District Capital Facilities Plan.

10. Update Map Folio to the Comprehensive Plan Consistent with changes made by Tasks 1-9 above.

11. Consider and Adopt or revise where necessary Development Regulations concerning the following:

a. Interim controls or policies concerning sewer availability;
b. Zoning Regulations for any newly annexed areas;
c. To the extent allowed by law and deemed prudent, Development Regulations for areas within the City's UGA;
d. the City's Concurrency requirements in the Uniform Development Code;
e. the City's Traffic Impact Fee as imposed by the Uniform Development Code;
f. the City's Park Impact Fee as imposed by the Uniform Development Code;
g. Development Regulations for Storm and Surface Waters consistent with the Storm Water Plan;
h. Creation of a Storm Water Utility and establishment of rates for the utility and their imposition;
i. Regulations consistent with any adopted Shorelines Master Program;
j. A new and updated Critical Areas Regulation in the Uniform Development Code.
k. Revised Zoning Regulations or Zoning Designations for areas along Highway 2 in the HOD and UC Zones.

The Public Meeting and Public Workshop Schedule with the Planning Agency to consider the Amendments will be held on the 1st and 3rd Tuesdays of each month, at 7:00 P.M. in the Sultan Community Center, 319 Main Street, Sultan, WA. The anticipated dates for Consideration and Review of the 11-Tasks (including subtasks) will begin on March 21, 2006 and continue through October, 2006. Monthly Agendas and Changes in the Schedule will be posted on the City's Webpage and e-mailed to Known Plan Parties of Interest, in addition to posting on the Public Access Channel 21, at City Hall, and at the Post Office. The Schedule for the Amendment Process beginning on March 21, 2006 is as follows:

1. March 21, 2006 Overview of all tasks and process including Plan Updates and Revisions, Level of Service (LOS), and with emphasis on Park Element Review. Note: (SEPA and CTED Review for Park Impact Fee Increase are under way. March 1, 2006 was the end of CTED comment period) (All Tasks)
2. March 23, 2006 Revised UGA Map Adoption (Task 4 and begin Task 10). First Reading of New Critical Areas Ordinance. (Task 11j).
3. April 4, 2006 Continue overview and begin review of Highway 2 Zoning (All Tasks and Task 11k)
4. April 4, 2006 Continue above review Items 1 and 2. (All Tasks with emphasis on Tasks 5 and 6).
5. April 13, 2006 Second Reading and Adoption of new Critical Areas Ordinance. (Task11j).

6. April 18, .2006 Continue above review Items 1 and 2, with emphasis on Transportation Element and TIP. Approve Annual TIP.(Task 6).
7. May 9, 2006 Continue above review Items 1 and 2, with emphasis on Parks and Capital Facilities. (Tasks 7, 8, and 11 f)
8. May 15, 2006 Completion and Review of Water, Wastewater, and Storm Water Plans by Health Department and Ecology. Review for incorporation into Plan. (Tasks 1, 2, and 3)
9. May 23, 2006 Finalize directions to Staff regarding Parks and Draft Capital Facility Plan. (Task 7 and 8.)
10. June 6, 2006 Draft Capital Facility Plan and Park Element (Tasks 7 and 8).
11. June 20, 2006 Final Capital Facility Plan Update (Task 8).
12. July 11, 2006 Final Capital Facility Plan Update; Final Park Element Update (Task 8).
13. July 25, 2006 Update Map Folio based on above.(Tasks 4 and 10).
14. Date unknown---consider Sultan School District Capital Facilities Plan (Task 9).
15. August 1, 2006 Environmental and CTED Review of Amendments.
16. September 14, 2006 First Reading of Ordinance Adoption of Amendments to Comprehensive and other General Plans (Task 1-10).
17. September 28, 2006 Second Reading of Ordinance and Adoption of Amendments to Comprehensive and other General Plans (Tasks 1-10). Adoption of revised Traffic Impact and Park Impact Fees.
18. October 3, 2006, for Development Regulations not already adopted (continue review of remaining Tasks 11 a-k).
19. October 17, 2006 (continue review of remaining Tasks 11a-k).
20. November 9, 2006, Public Hearing as to formation of Storm Water Utility and Utility Rates.
21. November23, 2006 First Reading of Ordinance to Establish Stormwater Utility and set rates and any other Development Regulation updates not previously considered. (Tasks 11a-k).
22. December14, 2006 Second Reading of Ordinance to Establish Stormwater Utility and set rates and any other Development Regulation updates not previously considered. (Tasks 11a-k).

For additional information concerning the Comprehensive Plan Amendment Process and Development Regulation Review Schedule, or to be included on the Known of Parties Interest e-mail list, please contact the Community Development Department at 360.793.2231 ext 226 or rick.cisar@ci.sultan.wa.us